IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6187 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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DINESH PALJIBHAI RATHOD

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for the Petitioner.

Mr.M.K. Patel, Assistant GOVERNMENT PLEADER,

for Respondent No. 1-3

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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 15/01/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 10.6.2002. By the impugned order, the petitioner is detained under the provisions of the Gujarat Prevention of Anti-Social

Activities Act. The petitioner is supplied with the grounds of detention, which is at Annexure `B', page 11. In the said grounds of detention, one criminal case which is pending against the petitioner is mentioned, being Guna Register No.5112/2002, dated 8.6.2002. The said case is registered under Section 66(1)(b)/65(a)(e) and Section 81 of the Bombay Prohibition Act. It is alleged against the petitioner that he has illegally brought Indian made foreign liquor and some bottles of beer, worth Rs.21,360/-. In the grounds of detention, certain statements of some witnesses are also produced, which are in connection with the alleged threat given by the petitioner to some of the witnesses and trying to assault them with knife. Considering the aforesaid material on record, the detaining authority has passed the impugned detention order.

At the time of hearing of this petition, learned Advocate for the petitioner argued that only one case is pending against the petitioner under the Prohibition Act. It is further argued by her that the allegation against the petitioner is about importing and selling Indian made foreign liquor in an illegal manner. It is mentioned in the detention order that the petitioner is in police custody and the fact that the petitioner has applied for bail is also mentioned. It is argued that, it cannot be said that the petitioner is guilty of disturbing public order and that, at the most, it is a case of breach of law and order. It is submitted that when the petitioner was in police custody, it was not necessary to pass a detention order by way of preventive detention. It is also argued that the statements of witnesses were recorded by the Detaining Authority on 8.6.2002 and the statements were verified on 9.6.2002 and, immediately, on the next day, detention order is passed. It is submitted that, therefore, it should be presumed that the detention order is passed mechanically.

Mr.M.K. Patel, learned Assistant Government Pleader, on the other hand, has supported the detention order.

I have heard the arguments of both the sides. I have also gone through the record of the case. I have also considered the detention order.

It is, no doubt, true that only one case was pending against the petitioner at the relevant time under the Bombay Prohibition Act. It is also equally true that the detaining authority has not stated anything in the order as to why it is necessary to detain the petitioner

by way of preventive detention, even though he is in police custody. At this juncture, reference is required to be made to the decision of this Court in Ranubhai Bhikhabhai Bharwad (Vekaria) v. State of Gujarat & Ors., 2000(3) GLR 2696. This Court, in the aforesaid decision, has laid down as under :-

> " ... ... ...
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> Once the materials are placed before the detaining authority with the proposal by the sponsoring authority, it must have reasonably sufficient time for the purpose of verification of the facts and the consideration of the entire material with an active application of mind and the order has to be passed at the earliest opportunity, but in this process to strike the balance between the public interest and the right of the detenu either of the two should not be defeated in any manner and the whole process must indicate that the detaining authority had applied its mind with the requisite approach and it had also devoted sufficient time before arriving at the decision to claim the privilege under Sec. 9(2) of the Act and also to come to the conclusion that the detenu was required to be detained immediately. In the facts of the present case, I find that this requirement of maintaining the balance has been defeated and the detention order has been passed on 30th August, 1999, i.e. on the next day to the date on which the materials were considered by the detaining authority.
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> ... ... ...."

The ratio laid down by this Court in the aforesaid judgment squarely applies to the facts of the present case, as the order of detention was passed by the Detaining Authority on 10.6.2002, i.e. on the very next day after verifying the statements of the witnesses on 9.6.2002. This petition deserves to be allowed in view of the aforesaid judgment of this Court and it is accordingly allowed and the order of detention is, therefore, quashed and set aside. It is ordered that the petitioner be released forthwith unless he is required in connection with any other case. Rule is accordingly made

absolute.

15th January, 2003 ( P.B. Majmudar, J. )

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(apj)